IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.85 OF 2007

Rajendra N. Kothari ..Petitioner

V/s.

Kotak Mahindra Prime Limited ..Respondent

WITH

ARBITRATION PETITION NO.86 OF 2007

Rajendra N. Kothari ..Petitioner

V/s.

Ford Credit Kotak Mahindra Limited ..Respondent

Ms.S.R.Kumbhat i/b. Kamalkishor Tated for the petitioner
Mr.Birendra Saraf i/b. M/s. V. Deshpande for the respondent

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13TH JULY, 2007

P.C.

1. Both petitions are by a common petitioner and therefore, a common order can dispose of the same.

2. The challenge in both petitions is to an Award made pursuant to a reference by the respondents of their claim to the sole arbitrator arising out of the loans which have been availed for purchasing vehicles.

3. There are two agreements and they are covering two types of vehicles. It is not necessary to go into the facts in great details in as much as the petitioners do not wish to challenge the Awards made against them, despite their contentions that same were made ex-parte. The petitioners upon taking instructions have informed the Court through their counsel that they are agreeable to pay the principal amounts under each of these Awards but want reduction in the rate of interest. The arbitrator while awarding the claims of the respondents has granted interest @ 18% from the date of filing of the claim till payment or realisation on the principle sums.

4. Ms.S.R.Kumbhat appearing in support of these petitions while relying upon a Judgment of the

Hon'ble Supreme Court, in the case of **Krishna Bhagya Jala Nigam Ltd. Versus G. Harischandra Reddy and Anr.**, reported in **2007 AIR(SC) 817** contends that the Supreme Court has taken judicial note of the fact that the interest rates have gone down and normally interest is charged @ 9% and that is how the Supreme Court in the case before it had scaled down the interest and reduced the same to that extent. She therefore, prays that the interest be reduced to 10%.

5. Mr.Birendra Saraf on the other hand, states that what the arbitrator has awarded is very low rate of interest in as much as the interest in contract is at much higher rate and that is agreed by the petitioner. They have not challenged the terms and conditions in as much as they have not disputed their liability also. Despite several opportunities they choose not to appear before the arbitrator and in such circumstances, the interest rate should not be reduced.

6. After this matter was argued for some time

and as suggested by both sides it is directed that instead of 18% as awarded, the interest would be @ 15%. Both sides did not dispute that the Court can determine the rate of interest and then liability would be cleared on that basis. After having perused the petitions and annexures thereto including subject Award and in the facts peculiar to this case I am of the opinion that interest of justice would be sub-served, if the Award is modified to the extent that the rate of interest on the sums directed to be paid would be computed at 15% interest instead of 18% interest as awarded.

7. Ms.Kumbhat upon taking instructions states that two Demand Drafts have been handed over to the respondents and balance sum due and payable with interest at the modified rate as above, would be duly paid. Some time be granted so also instalments may be determined by the Court. She prays for five instalments. However, that is opposed by Mr.Birendra Saraf on the ground that the amounts are payable for considerable period of time. The petitions were pending in this Court for a long

time. Therefore, no leniency be shown to the petitioner. Even on this count I find that in the facts peculiar to this case and since two Demand Drafts are handed over, interest of justice would be served, if time for payment of sums under the subject Awards is granted till 30th September, 2007.

8. Petitions disposed of with the modification as above. Needless to clarify that this concession is granted considering peculiar facts of this case and the orders passed in respect of the subject Awards not to operate as precedents in future cases. Similarly, if the amounts awarded are not paid with the modified rate of interest within the time stipulated above further needless to clarify that the entire amount would be due and payable with interest as awarded and thereupon the respondents would be at liberty to execute the Awards in accordance with law and recover the sums thereunder. Liberty to parties to apply for, recording satisfaction of the Award/decree upon the payment made as directed above and needless to state that the orders attaching properties of the

petitioners/judgment debtors shall continue to operate till the amounts are paid. No order as to costs so far as present proceedings are concerned.

(S.C.DHARMADHIKARI, J.)